



## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 110, 171, 172, 173, 174, 175, 176, 177, 178, and 180

[Docket No. PHMSA-2021-0091 (HM-260B)]

RIN 2137-AF56

### Hazardous Materials: Editorial Corrections and Clarifications; Correction

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Final rule; correction.

**SUMMARY:** The Pipeline and Hazardous Materials Safety Administration is correcting the final rule that appeared in the *Federal Register* on December 27, 2022. The final rule made editorial revisions and clarifications to the hazardous materials regulations including the hazardous materials table. The corrections address several errors to the hazardous material entries in the hazardous materials table.

**DATES:** This correction is effective January 26, 2023.

**FOR FURTHER INFORMATION CONTACT:** Yul B. Baker Jr., Standards and Rulemaking Division, at 202-366-8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, East Building, 2nd Floor, Washington, DC 20590-0001.

### SUPPLEMENTARY INFORMATION:

#### I. Background and Need for Correction

The Pipeline and Hazardous Materials Safety Administration (PHMSA) published final rule HM-260B<sup>1</sup> to correct editorial errors and improve the clarity of certain provisions in PHMSA's program and procedural regulations and in the Hazardous Materials Regulations

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<sup>1</sup> 87 FR 79752 (Dec. 27, 2022).

(HMR; 49 Code of Federal Regulations parts 171-180). The intended effect of the rulemaking was to enhance accuracy and reduce misunderstandings of the HMR. The changes in the final rule included numerous amendments to the § 172.101 Hazardous Materials Table (HMT). Unfortunately, the amendments to the table entries for various hazardous materials introduced new unintended errors that PHMSA is correcting in this notice. The unintended errors are summarized below.

*UN2258, 1,2-Propylenediamine:* In HM-260B, PHMSA removed special provision A6 from column (7) of the § 172.101 HMT for several hazardous materials including “UN2258, 1,2-Propylenediamine.” Special provision A6 was removed because it had been inadvertently added back to the § 172.101 HMT when making unrelated changes to entries in final rule HM-219C.<sup>2</sup> UN2258, 1,2-Propylenediamine is a Class 8 corrosive liquid material that also has a secondary Class 3 flammable hazard. Thus, in column (6) of the table, the codes “8” and “3” are specified for the hazard labels required for a package containing this material. However, in HM-260B, we inadvertently omitted reference to the “3” from column (6). The absence of the “3” will create uncertainty for shippers and carriers of “UN2258, 1,2-Propylenediamine” as to whether a Class 3 label is required on a package containing this material. To meet the original intent of HM-260B to enhance accuracy and reduce misunderstandings of the HMR, PHMSA is correcting this error in this notice. *See* Section III. Corrections.

*Vessel stowage codes:* In HM-260B, PHMSA also made several revisions to correct inadvertent omissions of vessel stowage codes from column (10B) to the § 172.101 HMT for the entries “UN1783, Hexamethylenediamine solution, 8, III,” “UN1788, Hydrobromic acid, *with not more than 49 percent hydrobromic acid*,” and “UN1740, Hydrogen difluoride, solid, n.o.s., 8, III.” Column (10B) assigns specific codes for the stowage and handling requirements for specific hazardous materials transported by vessel. In HM-219C, PHMSA had inadvertently omitted stowage code “52” for the Packing Group (PG) III entry for “Hexamethylenediamine solution”

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<sup>2</sup> 85 FR 75680 (Nov. 25, 2020).

and stowage codes “53” and “58” for the PG III entry for “Hydrogendifluoride, solid, n.o.s,” when making unrelated changes to these entries to specify reference citations for authorized packaging exceptions.

Stowage code “52” means stow “separated from” acids. Stowage codes “53” and “58” mean stow “separated from” alkaline compounds and stow “separated from” cyanides, respectively. These stowage codes are important to ensure proper segregation between acids and both amines and cyanides. Amines react dangerously with acids and evolving heat, and the heat of reaction has the potential to generate corrosive vapors. Cyanides react with acids to generate toxic vapors. PHMSA attempted to add the respective stowage codes back to column (10B) under HM-260B but instead added the stowage codes to column (7), which assigns special provisions applicable to certain § 172.101 HMT entries. More specifically, stowage code “52” was added to both column (7) and column (10B) for “Hexamethylenediamine solution, II” and stowage codes “53” and “58” were added to column (7) and not column (10B) for “Hydrogendifluoride, solid, n.o.s., III.”

Readers may misinterpret unrelated special provisions as being applicable and that the stowage codes that were inadvertently omitted would not apply. For example, special provision “53” requires packages to display a subsidiary risk label “EXPLOSIVE” along with the subsidiary hazard indicated in the shipping description. If “53” were to remain in column (7) for the PG III entry of “Hexamethylenediamine solution”—which is a corrosive material that does not have an explosive hazard—persons would be mischaracterizing the hazard for the material.

Additionally, in final rule HM-2150,<sup>3</sup> PHMSA inadvertently omitted stowage codes “53” and “58” for the entry “UN1788, Hydrobromic acid, *with not more than 49 percent hydrobromic acid.*” PHMSA had made numerous changes to the stowage codes assigned to hazardous materials in the § 172.101 HMT for consistency with the International Maritime Dangerous Goods (IMDG) Code for regulation of hazardous material transported by vessel including for the

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<sup>3</sup> 85 FR 27810 (May 11, 2020).

companion entry “UN1788, Hydrobromic acid, *with more than 49 percent hydrobromic acid.*” The IMDG Code Dangerous Goods List has just one table entry for “UN1788, Hydrobromic acid,” but PHMSA splits it into two hazardous materials descriptions because of varying safety measures dependent on the mode of transport. For instance, “UN1788, Hydrobromic acid, *with more than 49 percent hydrobromic acid,*” is forbidden for transport by air. PHMSA attempted to add the respective stowage codes to column (10B) of the § 172.101 HMT to the “not more than” entry of UN1788 but inadvertently omitted the “not” from the hazardous materials description effectively making the changes apply to the “more than” entry of UN1788. PHMSA also inadvertently omitted stowage code “8” in the process. If these errors remain uncorrected, readers may misinterpret the provisions that apply to the “more than” entry as now applying to the “not more than” entry and that the missing stowage codes would not apply when transporting this material. To meet the intent of HM-260B to enhance accuracy and reduce misunderstandings of the HMR, PHMSA is correcting these errors in this notice. *See* Section III. Corrections.

## **II. Regulatory Analyses and Notices**

### **A. Statutory/Legal Authority**

Statutory authority for this correction notice is provided by the Federal Hazardous Materials Transportation Law (49 U.S.C. 5101 *et seq.*). The Secretary delegated the authority granted in this law to the PHMSA Administrator at 49 CFR 1.97(b).

PHMSA finds it has good cause to make the corrections without notice and comment pursuant to Section 553(b) of the Administrative Procedure Act (APA, 5 U.S.C. 551, *et seq.*). Section 553(b)(B) of the APA provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. As explained above, the changes to the text of the final rule document provided in this notice consist of corrections to preamble discussion of § 172.101 HMT and corrections to the regulatory text in the amendatory instruction for changes to § 172.101 HMT. The publication of this correction

notice is needed to ensure the accuracy and reduce misunderstanding of unintended changes or omissions to § 172.101 HMT.

The January 26, 2023, effective date of the revisions contained in this notice is authorized under both Section 553(d)(1) and (3) of the APA. Section 553(d)(1) provides that a rule should take effect “not less than 30 days” after publication in the *Federal Register* except for “a substantive rule which grants or recognizes an exemption or relieves a restriction,” while Section 553(d)(3) allows for earlier effectiveness for good cause found by the agency and published within the rule. 5 U.S.C. 553(d)(1), (3). “The purpose of the thirty-day waiting period is to give affected parties a reasonable time to adjust their behavior before the final rule takes effect.” Omnipoint Corp. v. F.C.C., 78 F.3d 620, 630 (D.C. Cir. 1996). Since this final rule has not yet taken effect, the impact on affected parties is minimal and such parties will not be adversely impacted by the shortened period before the correction becomes effective. The corrections in this notice accurately represent the intended changes to the § 172.101 HMT in the final rule and, in accordance with 5 U.S.C. 553(d)(1), are effective January 26, 2023. Moreover, PHMSA finds that good cause under Section 553(d)(3) supports making the revisions effective January 26, 2023, because the corrections contained in this notice are entirely consistent with the final rule—which itself was published on December 27, 2022—and helps promote accuracy and understanding of the § 172.101 HMT requirements prior to the January 26, 2023, effective date.

B. *Executive Order 12866 and DOT Regulatory Policies and Procedures*

This notice has been evaluated in accordance with existing policies and procedures and is considered not significant under Executive Order 12866 (“Regulatory Planning and Review”) and DOT Order 2100.6A (“Rulemaking and Guidance Procedures”); therefore, this notice has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. PHMSA finds that the corrections in the notice (in all respects consistent with the final rule) neither impose incremental compliance costs nor adversely affect safety.

C. *Regulatory Flexibility Act and Executive Order 13272*

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires agencies to review regulations to assess their impact on small entities unless the agency head certifies that a rulemaking will not have a significant economic impact on a substantial number of small entities including small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses when possible to do so and still meet the objectives of applicable regulatory statutes. Executive Order 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”)<sup>4</sup> requires agencies to establish procedures and policies to promote compliance with the Regulatory Flexibility Act and to “thoroughly review draft rules to assess and take appropriate account of the potential impact” of the rules on small businesses, governmental jurisdictions, and small organizations. DOT posts its implementing guidance on a dedicated webpage.<sup>5</sup>

The final rule was developed in accordance with Executive Order 13272 and with DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act and ensure that potential impacts of draft rules on small entities are properly considered. There are no costs to small entities associated with the final rule. The final rule made non-substantive changes that do not impose new requirements, so there are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations. This notice similarly does not impose new requirements but makes corrections to errors in the final rule document in the amendments to the § 172.101 HMT that if left uncorrected would be inaccurate and cause misunderstanding by stakeholders as to what requirements apply. Consequently, PHMSA

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<sup>4</sup> 67 FR 53461 (Aug. 16, 2002).

<sup>5</sup> DOT, “Rulemaking Requirements Related to Small Entities,” <https://www.transportation.gov/regulations/rulemaking-requirements-concerning-small-entities> (last accessed June 17, 2021).

certifies that neither the final rule nor this notice has a significant economic impact on a substantial number of small entities.

D. *Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), no person is required to respond to any information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d) of 5 CFR requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests. The corrections in this notice impose no new or revised information collection.

E. *Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501, *et seq.*) requires agencies to assess the effects of federal regulatory actions on state, local, and tribal governments, and the private sector. For any final rule that includes a federal mandate that may result in the expenditure by state, local, and tribal governments, or by the private sector of \$100 million or more in 1996 dollars in any given year, the agency must prepare, amongst other things, a written statement that qualitatively and quantitatively assesses the costs and benefits of the federal mandate. The final rule did not impose unfunded mandates under the UMRA and this notice to correct errors in the final rule document also does not impose unfunded mandates. It does not result in costs of \$100 million or more in 1996 dollars to either state, local, or tribal governments, or to the private sector in any one year and is the least burdensome alternative that achieves the objective of the rule.

F. *National Environmental Policy Act*

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), and implementing regulations by the Council on Environmental Quality (40 CFR part 1500) requires federal agencies to consider the consequences of federal actions and prepare a detailed statement on actions that significantly affect the quality of the human environment. DOT Order 5610.1C, “Procedures for Considering Environmental Impacts,” establishes departmental procedures for evaluating environmental impacts under NEPA and its implementing regulations. The purpose of the final rule was to introduce non-substantive changes that do not impose new requirements in order to improve accuracy and understanding of the HMR. The corrections to the final rule in this notice similarly do not impose new requirements. Therefore, PHMSA has determined that implementing this final rule will not significantly impact the quality of the human environment.

G. *Executive Order 13132*

The final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”)<sup>6</sup> and its implementing Presidential Memorandum (“Preemption”).<sup>7</sup> Executive Order 13132 requires agencies to assure meaningful and timely input by state and local officials in the development of regulatory policies that may have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” The corrections in this notice are consistent with, and facilitate compliance with, the final rule, and do not have any substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government beyond what was accounted for in the final rule. It does

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<sup>6</sup> 64 FR 43255 (Aug. 10, 1999).

<sup>7</sup> 74 FR 24693 (May 22, 2009).



not contain any provision that imposes any substantial direct compliance costs on state and local governments, nor any new provision that preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

#### H. *Environmental Justice*

Executive Orders 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”),<sup>8</sup> 13985 (“Advancing Racial Equity and Support for Underserved Communities Through the Federal Government”),<sup>9</sup> 13990 (“Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis”),<sup>10</sup> 14008 (“Tackling the Climate Crisis at Home and Abroad”),<sup>11</sup> and DOT Order 5610.2C (“Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”) require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects of their programs, policies, and activities on minority populations, low-income populations, and other underserved and disadvantaged communities.

PHMSA evaluated the final rule under the above Executive Orders and DOT Order 5610.2C and did not expect the final rule to cause disproportionately high and adverse human health and environmental effects on minority, low-income, underserved, and other disadvantaged populations and communities. The final rule was facially neutral and national in scope; it was neither directed toward a particular population, region, or community, nor was it expected to adversely impact any particular population, region, or community. Since PHMSA did not expect the final rule to adversely affect the safe transportation of hazardous materials generally, PHMSA does not expect the corrections to the final rule in this notice to involve

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<sup>8</sup> 59 FR 7629 (Feb. 11, 1994).

<sup>9</sup> 86 FR 7009 (Jan. 20, 2021).

<sup>10</sup> 86 FR 7037 (Jan. 20, 2021).

<sup>11</sup> 86 FR 7619 (Feb. 1, 2021).

disproportionately high adverse risks for minority populations, low-income populations, or other underserved and other disadvantaged communities.

I. *Executive Order 13175*

The final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”)<sup>12</sup> and DOT Order 5301.1 (“Department of Transportation Policies, Programs, and Procedures Affecting American Indians, Alaska Natives, and Tribes”). Because none of the corrections have Tribal implications or impose substantial direct compliance costs on Indian Tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

Executive Order 13175 and DOT Order 5301.1 require DOT Operating Administrations to assure meaningful and timely input from Indian Tribal government representatives in the development of rules that significantly or uniquely affect tribal communities by imposing “substantial direct compliance costs” or “substantial direct effects” on such communities or the relationship and distribution of power between the Federal Government and Native American Tribes. PHMSA assessed the impact of this final rule and determined that it did not significantly or uniquely affect tribal communities or Native American Tribal governments. The changes to the HMR as written in the final rule are facially neutral and have broad, national scope. PHMSA therefore, expected the final rule not to affect tribal communities significantly or uniquely, much less impose substantial compliance costs on Native American Tribal governments or mandate tribal action. Because PHMSA expects the final rule will not adversely affect the safe transportation of hazardous materials generally, PHMSA does not expect it will entail disproportionately high adverse risks for tribal communities. For these reasons, PHMSA concluded the funding and consultation requirements of Executive Order 13175 and DOT Order 5301.1 do not apply. Similarly, PHMSA does not expect the corrections to the final rule in this

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<sup>12</sup> 65 FR 67249 (Nov. 6, 2000).

notice to affect tribal communities significantly or uniquely, much less impose substantial compliance costs on Native American Tribal governments or mandate tribal action.

J. *Executive Order 13609 and International Trade Analysis*

Under Executive Order 13609 (“Promoting International Regulatory Cooperation”),<sup>13</sup> agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The corrections to the final rule in this notice do not impact international trade.

K. *National Technology Transfer and Advancement Act*

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies. The corrections to the final rule do not invoke any voluntary consensus standards, so the National Technology Transfer and Advancement Act of 1995 is not applicable in this case.

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<sup>13</sup> 77 FR 26413 (May 4, 2012).

## Corrections

PHMSA makes corrections to both the preamble and regulatory text of the final rule document. PHMSA is correcting the preamble discussion of changes to column (7) of the § 172.101 HMT by removing discussion of changes to the entries “UN1783, Hexamethylenediamine solution, 8, III,” and “UN1740, Hydrogendifluoride, solid, n.o.s., 8, III,” which misconstrue the intended vessel storage codes changes as special provision changes and correctly adds to the discussion of column (10B) changes as discussion of vessel stowage code changes for these materials. Additionally, PHMSA is correctly revising the § 172.101 HMT entries for the hazardous materials discussed above in Section I.

In FR Doc. 2022-26960, appearing on page 79752 in the *Federal Register* of Tuesday, December 27, 2022, the following corrections are made:

### *Corrections to Preamble*

1. On page 79755, in the 3rd column, beginning at the bullet paragraphs starting with “For “UN1740”” and “For “UN1783””, the following are correctly removed:

- For “UN1740, Hydrogendifluoride, solid, n.o.s., 8, PG III,” PHMSA is correcting an error where special provisions 53 and 58 are missing from column 7.
- For “UN1783, Hexamethylenediamine solution, 8, PG III, PHMSA is correcting an error where special provision 52 is missing from column 7.

2. On page 79756, in the 2nd column at the end of the first paragraph and before the heading “Section 172.102,” the following is correctly added:

- In column (10B) for “UN1740, Hydrogendifluoride, solid, n.o.s., 8, PG III,” stowage codes “53” and “58” are missing. PHMSA inadvertently omitted these stowage codes when making changes to this entry in HM-219C to allow packaging exceptions. Stowage code “53” provision means stow “separated from” alkaline compounds and stowage code

“58” provision means stow “separated from” cyanides. PHMSA is amending the HMT to add the stowage codes back to column (10B). This amendment will ensure that this material is properly stowed for safe vessel transport.

- In column (10B) for “UN1783, Hexamethylenediamine solution, 8, PG III,” stowage code “52” is missing. PHMSA inadvertently omitted this stowage code when making changes to this entry in HM-219C to allow packaging exceptions. Stowage code “52” provision means stow “separated from” acids. PHMSA is amending the HMT to add the stowage code back to column (10B). This amendment will ensure that this material is properly stowed for safe transport.

#### *Correction to Regulations*

#### **§ 172.101 [Corrected]**

3. In the amendments to § 172.101, in the table, make the following corrections:

- a. On page 79769, correctly revise the entry for “Hexamethylenediamine solution”;
- b. On page 79769, remove the entry for “Hydrobromic acid, with more than 49 percent hydrobromic acid” and correctly add in its place an entry for “Hydrobromic acid, with not more than 49 percent hydrobromic acid”;
- c. On page 79769, correctly revise the entry for “Hydrogendifluoride, solid, n.o.s.”; and
- d. On page 79770, correctly revise the entry for “1,2 Propelenyamine”.

The corrections read as follows:

## § 172.101 Hazardous Materials Table

[illegible]

Issued in Washington, D.C., on January 19, 2023, under the authority delegated in  
49 CFR 1.97.

**Tristan H. Brown**

Deputy Administrator,

Pipeline and Hazardous Materials Safety Administration

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